

**IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD**

HON'BLE Mr. JUSTICE R. SUBHASH REDDY

Writ Petition No.6730 of 2007

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Dated: December 6th, 2007
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Between:

The Deputy General Manager,
Vijaya Bank, Regional Office,
III Floor, Babukhan Estates,
Basheerbagh, Hyderabad.

... Petitioner

And

Central Government Industrial Tribunal-cum-
Labour Court, Opp: Chandra Vihar, Nampally,
Hyderabad, and another.

... Respondents

Order:

This writ petition is filed by Vijaya Bank, through its Deputy General Manager, Regional Office, Hyderabad, questioning the validity of the Award dated 12-09-2006, passed in I.D.No.5 of 2005, by the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad.

2. The second respondent herein, who claims that he has worked

as a temporary peon, intermittently, from 05-10-1983 to 31-05-2003 at Guntakal Branch of the petitioner-Bank, claimed absorption of his services in the Bank. As the dispute raised by the second respondent for his absorption was not resolved by way of conciliation, the Government of India, Ministry of Labour made a reference to the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad, for adjudication of the following dispute:

“Whether it is a fact that Sri P. Renu Rao was engaged as a Temporary Sub-staff during the period from October, 83 to 2000 by the Management of Vijaya Bank? If so, whether the action of the Management of Vijaya Bank in not providing regular employment to Sri P. Renu Rao, Temporary Peon, Guntakal branch and terminating his services is legal and justified? If not, to what relief the workman is entitled to?”

3. On such reference, the case was numbered as I.D.No.5 of 2005 on the file of the first respondent. On receipt of the notice, petitioner as well third respondent made their appearance and the second respondent filed claim petition stating that he was continuously working as temporary peon upto 31-05-2003 in the Guntakal branch of the petitioner-Bank and his services were orally terminated by the Branch Manager without any valid reasons. In the claim petition, it was stated that as much as he worked for minimum number of days to acquire eligibility in terms of the settlement entered into by the workers' union with the petitioner-Bank, as such, he is entitled for absorption as Peon on regular basis. On behalf of the petitioner, appearance was filed. On the ground that counter affidavit is not filed, the second respondent passed final orders allowing the claim of the second respondent.

4. On behalf of the second respondent/workman, documents under

Exs.W.1 to W.5 were marked.

5. The Tribunal below, in the impugned Award, by recording a finding that the action of the petitioner-Bank in disengaging the services of the second respondent is illegal, issued directions to the petitioner-Bank to absorb the second respondent into service within a period of three months from the date of publication of the Award.

6. The case of the petitioner is that the second respondent is not eligible for absorption in terms of the settlement entered into by it with the workers' union as he has not worked for minimum number of days in terms of the settlement after attaining the age of majority. It is stated that, on receipt of notice, they made their appearance before the Tribunal, but, under a mistaken impression, they have not pursued the case further before the Tribunal. It is stated that the counsel on record was pursuing another case with the same number and under a mistaken impression, as the other case was closed, entries could not be made in his case diary, to pursue the case. It is submitted that the Tribunal has not considered relevant aspects before issuing directions for absorption of the second respondent into service; as such if the impugned Award is not set aside, by giving opportunity to the petitioner to put forth its case, large number of employees who are ineligible will seek the same relief.

7. On behalf of the second respondent, counter affidavit is filed stating that though appearance was filed on behalf of the petitioner-Bank before the Tribunal, however, in spite of giving number of opportunities, no counter affidavit is filed, and, as such, ex parte Award was passed. While pleading that he had worked for minimum number of days in terms of the settlement, it is stated that his claim was not considered by the petitioner-Bank without any valid reason. It is stated

that he was appointed on 05-10-1983 and worked as such till 2003 at the Guntakal Branch of the petitioner-Bank. It is stated in the counter affidavit that having failed to file counter affidavit before the Tribunal, it is not open for the petitioner-Bank to question the Award at this point of time.

8. Heard Sri E. Ajay Reddy, learned counsel for the petitioner-Bank and Sri T.V. Rajeevan for the second respondent-workman.

9. In the year 1988, there was a demand from the workers' union to the petitioner-Bank for absorption of temporary employees who are working as Peons in sub-ordinate cadre in the regular service of the Bank. Ultimately, on 19-08-1988, the Bank and its workers' union had entered into a memorandum of settlement as contemplated under Sections 2(P) and 18(1) of the Industrial Disputes Act, 1947 read with Rule 58 of the Industrial Disputes (Central) Rules, 1957. I have perused a copy of the memorandum of settlement entered into between the parties. In terms of the said settlement, all temporary workmen who worked as Peons for aggregate period of 90 days or more in the Bank during the period between 01-01-1983 and 20-06-1988 are eligible to apply to the Bank for consideration for regular employment as Peons in the Bank and all eligible candidates shall submit application to the Bank as per the pro forma within a period of 60 days. As per the settlement, a candidate, to acquire eligibility should be aged above 18 years of age and below 20 years of age on the date of initial temporary appointment. A committee was constituted to screen the candidates in terms of the settlement. Under Clause-4 of the settlement, the candidates who are empanelled upon scrutiny of the Committee are entitled for absorption into regular service of the Bank subject to availability of permanent vacancy in each year in the

respective offices, divisions, States, Union Territories, where they are empanelled upto 75% of the total available vacancies.

10. Whereas it is the case of the second respondent that he has fulfilled the eligibility criteria in terms of the settlement, by working for minimum number of days and therefore he is eligible for absorption, however, it is the case of the petitioner-Bank that the second respondent did not acquire eligibility in terms of the settlement to claim absorption in the regular service. Further, it is to be seen that though counter affidavit is not filed, the Tribunal below, without considering the documentary evidence on record and the settlement arrived between the Bank and the Union, has ordered for absorption into service. As much as the petitioner-Bank has assigned valid reasons for not filing counter affidavit and it is the case of the petitioner-Bank before the Tribunal that it has made its appearance and further in view of its stand that second respondent is not eligible in terms of the settlement, I deem it appropriate that it is a fit case to permit the petitioner-Bank to put forth its defence before the Tribunal, subject to payment of costs by the petitioner-Bank to the second respondent for the costs incurred by him in pursuing the litigation.

11. Accordingly, the Award dated 12-09-2006 passed in I.D.No.5/2005 is set aside on the condition of petitioner-Bank paying costs of Rs.5,000/- to the second respondent, within a period of six weeks from the date of receipt of this order. The costs shall be deposited to the credit of I.D.No.5 of 2005. On such deposit, second respondent is eligible to withdraw the same without furnishing any security. Petitioner-Bank is permitted to file counter before the Tribunal within a period of six weeks. Thereafter, first respondent-Tribunal is directed to proceed with the enquiry in I.D.No.5 of 2005 and

dispose of the same within a period of four months from the date of receipt of this order.

12. The writ petition is accordingly disposed of.

JUSTICE R. SUBHASH REDDY.

December 6th, 2007

MRR